REMARKS

The Decision on Appeal mailed September 21, 2004 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

I. Summary of Claims

Claims 9-13 and 17-53 are currently pending in the application, with claims 9, 17, 31, 40, 47, and 52 being independent claims. Claim 9 is amended, claims 17-53 are added, and claims 1-8 and 14-16 are cancelled, as indicated in the above amendments.

The following claim rejections were submitted by the Board of Patent Appeals and Interferences in the Decision on Appeal:

- Claims 1 and 8 were rejected under 35 U.S.C. §102(b) as being anticipated by French Patent Application Number 2,670,369 to Colesnicenco Niculae (hereafter referred to as Colesnicenco); and
- Claims 2-7, 9-14, and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Colesnicenco, European Patent Application Number 1,074,193 to Opal Limited (hereafter referred to as Opal), and U.S. Patent Number 6,582,113 to Rogers.

In addition, the Board of Patent Appeals and Interferences indicated that the rejection of claim 15 is not sustained.

II. Summary of Applied Prior Art

Discussion of Colesnicenco

Colesnicenco discloses a fluid system that may be incorporated into an article of footwear for ventilating the interior of the footwear. The fluid system includes an inlet having a filter, a compressible bellows, and a discharge structure. Based upon the discussion in Colesnicenco, it appears that compressing the bellows induces air within the bellows to pass through a conduit connecting the bellows with the discharge structure. The air is then discharged into the interior of the footwear (i.e., into the void within the upper that encloses the foot). When the bellows expands air is drawn through the inlet and into the bellows. Through successive compressions and expansions of the bellows, air may be repeatedly pumped into the upper to ventilate the area

around the foot. Regarding the filter, Colesnicenco states that felt or another filtering material may be utilized.

Discussion of Opal

Opal discloses an article of footwear having an upper with an arch portion. As stated in Opal, "[a] plurality of openings (24) are located in the arch portion (18)....A waterproof, breathable membrane (26) larger than the area of the openings (24) is secured to the upper part (16) across the openings" (Opal, column 3, lines 28-40). Furthermore, the "waterproof and breathable membrane is sandwiched between the inside and outside surfaces in the arch portion of the upper part..." (Abstract). The membrane may be formed of a material such as Gore-Tex®, which includes polytetrafluoroethylene, otherwise referred to as PTFE.

Discussion of Rogers

Rogers discloses a laminated filter material having an expanded polytetrafluoroethylene layer and a scrim layer of, for example, polypropylene.

III. The Claims Patentably Distinguish Over The Applied Prior Art

Discussion of Independent Claim 9

Independent claim 9 is amended to substantially incorporate the recitations of dependent claims 14 and 15. As filed, claim 14 was based upon independent claim 9, and claim 15 was based upon claim 14. The Decision on Appeal indicated that the rejection of claim 15 is not sustained. In effect, therefore, the Applicants submit that the combination of the originally-filed independent claim 9 and dependent claims 14 and 15 is allowable over the prior art of record. Accordingly, the Applicants respectfully submit that independent claim 9, as amended, is allowable. In addition, dependent claims 10-13 should be allowable for at least the same reasons.

Discussion of Independent Claim 17

Independent claim 17 recites various features of an article of footwear having an upper, a sole structure secured to the upper, and a fluid system incorporated into at least one of the upper and the sole structure. The fluid system includes a filter, a pump, and a pressure chamber. The

filter is structured to permit ambient air to enter the fluid system and restrict liquids and particulates from entering the fluid system. The pump is in fluid communication with the filter, and the pump pressurizes the air to a pressure above ambient pressure. In addition, the pressure chamber is in fluid communication with the pump for enclosing the air that is pressurized by the pump.

The fluid system recited in independent claim 17 operates to draw air into the system while restricting entry of liquids and particulates. The pump is in fluid communication with the filter and pressurizes the air. The air that is pressurized by the pump is then enclosed by the pressure chamber. In effect, therefore, the pressure chamber stores the pressurized air. When the pressure chamber is located in the sole structure, for example, the pressure chamber may attenuate ground reaction forces associated with compressions of the sole that occur during running, walking, and jumping.

Colesnicenco, for example, discloses a fluid system for footwear that operates to ventilate the upper. As discussed above, the system of Colesnicenco includes an inlet, a bellows, and a discharge structure. In contrast with independent claim 17, however, Colesnicenco does not disclose a pressure chamber that encloses pressurized air. Given the specialized purpose of the fluid system in Colesnicenco (i.e., to ventilate the upper) is would not be obvious to add a pressure chamber for enclosing pressurized air. More particularly, adding a pressure chamber to Colesnicenco for purposes of attenuating ground reaction forces would effectively render Colesnicenco inoperable for its intended purpose.

Based upon the above discussion, the Applicants respectfully submit that independent claim 17 is allowable over the applied prior art. In addition, dependent claims 18-30 should be allowable for at least the same reasons.

Discussion of Independent Claim 31

Independent claim 31 recites various features of an article of footwear having an upper, a sole structure secured to the upper, and a fluid system incorporated into at least one of the upper and the sole structure. The fluid system includes a filter, a pump, and a pressure chamber. The filter forms an inlet to the fluid system and incorporates a polytetrafluoroethylene material. The pump is in fluid communication with the filter, and the pump pressurizes the air to a pressure

above ambient pressure. In addition, the pressure chamber is in fluid communication with the pump for enclosing the air that is pressurized by the pump.

The fluid system operates to draw air into the system, pressurize the air, and locate the pressurized air in the pressure bladder. The filter incorporates a polytetrafluoroethylene material. In contrast with independent claim 31, Colesnicenco discloses that the filter may be formed of felt or another filtering material. In addition, Colesnicenco does not disclose a pressure chamber that encloses pressurized air. Given the specialized purpose of the fluid system in Colesnicenco (i.e., to ventilate the upper) is would not be obvious to add a pressure chamber for enclosing pressurized air because this would effectively render Colesnicenco inoperable for its intended purpose.

Based upon the above discussion, the Applicants respectfully submit that independent claim 31 is allowable over the applied prior art. In addition, dependent claims 32-39 should be allowable for at least the same reasons.

Discussion of Independent Claims 40, 47, and 52

Each of independent claims 40, 47, and 52 recite various features of an article of footwear incorporating a fluid system. In addition to including a filter, a pump, and a pressure chamber (as in independent claims 17 and 31), these claims recite additional fluid system elements, such as (1) a first valve located in a fluid path between the filter and the pump and (2) a second valve located in a fluid path between the pump and the pressure chamber. Furthermore, independent claim 52 recites the presence of a conduits.

Each of the arguments discussed above with respect to independent claims 17 and 31 apply to independent claims 40, 47, and 52. The additional structures recited in independent claims 40, 47, and 52 also distinguish these claims from Colesnicenco. For example, the second valve, which is located in the fluid path between the pump and the pressure chamber is not taught or suggested in Colesnicenco.

Based upon the above discussion, the Applicants respectfully submit that independent claims 40, 47, and 52 are allowable over the applied prior art. In addition, dependent claims 41-46, 48-51, and 53 should be allowable for at least the same reasons.

IV. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed by facsimile transmission on November 19, 2004 with a Request for Continued Examination. Should additional fees or an extension of time be deemed necessary for consideration of this Amendment, such fees or extension are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for the payment of the requisite fee. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 425-6800.

Respectfully submitted,

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